# Round Table: Self Regulation, Voluntary Compliance And Environmental Protection, November 14, 1996

## Summary Of The Discussion

### Introduction

The goals of this Round Table were:

- To discuss self regulation and voluntary compliance measures, and their effectiveness at achieving both environmental protection and economic savings for Ontario.

- To identify research needs for designing an objective test of effectiveness for these types of initiatives.

Fourteen representatives from industry, education, municipalities, provincial government, environmental groups and organized labour took part. Informal feedback on the Round Table has been positive.

This discussion summary highlights some of the key points raised, focusing specifically on comments that add value to the discussion paper provided to participants by the Environmental Commissioner of Ontario. The summary is presented in three parts:

1. Round Table Discussion Paper
   Brief outline of the discussion paper provided to participants.

2. Round Table Discussion Highlights
   Summary of key points raised.

3. Conclusions And Next Steps

# 1. Round Table Discussion Paper

Definitions
The Round Table Discussion Paper provided definitions of self regulation and voluntary compliance to ensure participants worked from a common ground with respect to terminology.

Examples Of Voluntary Initiatives And Self Regulatory Approaches
The paper offered recent Canadian examples of voluntary initiatives and self regulatory approaches. These included purely voluntary initiatives taken on by industry and citizens, along with voluntary and self regulatory initiatives with regulatory foundations or which are otherwise encouraged by government.

Pros And Cons Of Voluntary Compliance And Self Regulatory Initiatives
Arguments in favor and against these initiatives were presented to provide a balanced approach to the discussion.

Recently Introduced Initiatives In Ontario
Several examples of voluntary compliance and self regulation initiatives recently introduced in Ontario were provided to enhance the timeliness of the discussion.

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# 2. Round Table Discussion Highlights

Participant Arguments For Voluntary Compliance And Self Regulatory Initiatives

- Regulations are blunt instruments in their application. Voluntary initiatives can be targeted directly. Voluntary is the wrong term because there is a coercive feature to them – they are like contracts.

- Regulation can stifle creativity; voluntary compliance measures can open new options that can lead to better performance.

- There is a rich history of voluntary approaches in Europe from which we can learn in North America.

- There are other areas of public policy and administration where self management has been used (self regulation in the travel industry, for example). We should evaluate whether some of the experience in these other areas is transferable to the environmental field.

Participant Arguments Against Voluntary Compliance And Self Regulatory Initiatives

- Voluntary compliance does not guarantee performance; it only guarantees participation. Performance is related more to the development of Environmental Management Systems. It is important to discuss why it succeeds and why it doesn't.

- There is a public confidence issue. Who will know, and how, if municipalities and corporations are following the rules?

- One size does not fit all. For example, some large municipalities will be able to cope, while smaller ones may not be able to meet voluntary compliance, self regulatory goals.

- The idea that traditional command and control regulation has failed is

wrong. Writers such as Michael Porter are talking about improving regulations and fixing the regulatory process. Innovations like command and prevent need to be explored.

- A July 1996 poll showed that the public wants more effective environmental regulation. The regulatory approach is fundamental to the rule of law – it protects all and creates a level playing field.

- Everyone agrees we have to keep the basic regulatory structure. It has proven itself on a cost basis. The public trust will be lost if we remove the
regulatory base.

- There is no evidence that the voluntary approach is cheaper and more effective than regulation. The current approach of the government is extremely problematic – what about transparency? What about third party review? What about enforcement?

- Regulations were put in place for a specific purpose. The rush to implement voluntary compliance measures is ill-advised and inappropriate as we have no basis to judge whether this new approach will be more effective or cheaper. How long will we wait to judge the effectiveness of this experiment and by what criteria will these assessments be made?

A Combination Of Both

- There is a need to build self monitoring into the process but it cannot be

relied on 100 per cent.

- Memorandums of Understanding and voluntary standards need to be backed
by strong provincial regulations. It is important to have both carrot and stick.

- Regulations can distort environmental priorities (MISA regulations, for example). Industry will spend millions of dollars to meet regulations. The real world will contain a mix of voluntary initiatives but the law is the minimum standard.

- There is a need to clarify the principles of a good environmental management system. These should include: public reporting and accountability mechanisms; clear standards; a multistakeholder process to develop the standards; clear timeframes and priorities based on relative risk; and a sound enforcement system.

- Neither pure command and control nor pure voluntarism is effective at making the environment and economy sustainable. Industry likes standards but the concept of regulation in Ontario is not very flexible. Innovative proposals are discouraged and companies move elsewhere. Cleanups are

not being done as fast as they should be. Neither strict voluntary compliance

nor strict monitoring has worked. The solution is somewhere in the middle.

Management by standards has worked in Europe and it can work in Canada.

- Voluntary measures are for leaders of change – people who are going beyond basic standards. Some regulations don't make sense (fees that penalize environmental improvements, for example), but others are imperative. Build on what you've got.

- Continuing viability of the environment requires leaders of change – these may come from different parts of the spectrum in different sectors of the economy.

- A mature industry and a clear regulatory backdrop are prerequisites for establishing voluntary initiatives.

- We need to keep the regulatory base and at the same time encourage innovation and avoid punishing honest efforts to improve.

Other Key Points

- We should be talking about self management, not self regulation. The government sets performance standards. The law is the minimum standard,
the price of admission to voluntary compliance measures.

- Some automakers are backing out of waste audits because management

anticipates that these regulations will be removed by the Ontario government.

- There is growing support for stronger regulation. Law is the prime motivator for industry.

- With voluntarism, what is the role of the government? Essentially voluntarism is a privatization of the public good, the core service of government.

- Some regulations have worked very well but others lead to non-compliance
because they're too hard to understand.

- The Environmental Bill of Rights was intended to provide a framework for the development of new regulations. It allows for development of a new regulatory system through the Application for Review process.

- The message must be conveyed to the government that a multistakeholder process is fundamental to successful 21st century politics.

- The current focus is on information, the market, and the environment. This all needs much more discussion.

- We are talking about an issue that is bigger than just environmental regulation – rather the methodologies of political action. There is a range of ways in which we can effect change in behaviour, from direct authority to influence and reward. The best mix of is up for discussion in the western world's current political environment. We seem to be moving away from direct authority and towards influence and reward. This discussion can become ideological. We need to focus on ends and these should be protecting the environment.

- Voluntary compliance measures and regulation represent extreme points on a continuum. Neither works well and credible middle ground is required. Standards are a viable alternative. Courts can be used to intervene to prevent environmental degradation. The Environmental Bill of Rights could be a framework within which this could be managed.

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## 3. Conclusions And Next Steps

The following are the conclusions of the Environmental Commissioner of Ontario and do not necessarily reflect the conclusions of the participants.

Conclusion 1.
Some key stakeholders feel they are being excluded from provincial policy making . on environmental issues. This could become a significant barrier to effective policy making.
Next Step
Ensure that provincial policy on the environment reflects opinions from a range of informed public comment.

Conclusion 2.

Concern about the viability of voluntary compliance as an alternative to other ways of promoting compliance is high.
Next Step
Research and describe the role of voluntary compliance on a continuum – from detailed laws and regulations to self management initiatives and market incentives.

Conclusion 3.
Voluntary initiatives have been characterized as a workable addition to a foundation of regulatory initiatives, enforcement and legislative action.
Next Step
Research and determine the appropriate regulatory, legislative and enforcement backdrop necessary to legitimize voluntary initiatives.

Conclusion 4.
There is agreement on the need for transparency and public accountability in the relationship to voluntary initiatives, but none on whether they alone can make good public policy.
Next Step
Further research the features of an appropriate framework for voluntary initiatives and the role that can be played by independent evaluation.

Conclusion 5.
There is no agreement and little research about which situations suit voluntary initiatives and which do not.
Next Step
Research and develop an analysis of situations where voluntary initiatives meet both public policy and industry needs.

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## Round Table Participants

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For more information on this Round Table or discussion summary, please call the Environmental Commissioner of Ontario at 416-325-3377 or 1-800-701-6454.